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9  
10 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
**FOR THE BUREAU OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2004-1123

13 SOVANN PRAK  
45 South Road, 1-B  
14 Groton, CT 06340

**A C C U S A T I O N**

15 Vocational Nurse License No. VN 203379

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this  
21 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational  
22 Nursing and Psychiatric Technicians, Department of Consumer Affairs.  
23 2. On or about March 21, 2003, the Bureau of Vocational Nursing and  
24 Psychiatric Technicians issued Vocational Nurse License Number VN 203379 to Sovann Prak  
25 (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to  
26 the charges brought herein and will expire on July 31, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Director of Consumer Affairs (Director) for the Bureau of Vocational Nursing and Psychiatric Technicians, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Bureau may renew an expired license at any time within four years after the expiration.

6. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(e) Making or giving any false statement or information in connection with the application for issuance of a license.

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

....

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

....

1                   7.       Section 2878.5 of the Code states:

2                   In addition to other acts constituting unprofessional conduct within the  
3                   meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional  
4                   conduct for a person licensed under this chapter to do any of the following:

5                   (a) Obtain or possess in violation of law, or prescribe, or except as  
6                   directed by a licensed physician and surgeon, dentist or podiatrist administer to  
7                   himself or herself or furnish or administer to another, any controlled substance as  
8                   defined in Division 10 of the Health and Safety Code, or any dangerous drug as  
9                   defined in Section 4022.

10                   . . . .

11                   8.       Section 490 of the Code provides, in pertinent part, that the Board may  
12                   suspend or revoke a license when it finds that the licensee has been convicted of a crime  
13                   substantially related to the qualifications, functions or duties of a licensed vocational nurse.

14                   9.       Section 492 of the Code states:

15                   Notwithstanding any other provision of law, successful completion of any  
16                   diversion program under the Penal Code, or successful completion of an alcohol  
17                   and drug problem assessment program under Article 5 (commencing with section  
18                   23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit  
19                   any agency established under Division 2 ([Healing Arts] commencing with  
20                   Section 500) of this code, or any initiative act referred to in that division, from  
21                   taking disciplinary action against a licensee or from denying a license for  
22                   professional misconduct, notwithstanding that evidence of that misconduct may  
23                   be recorded in a record pertaining to an arrest.

24                   . . . .

25                   10.      Section 493 of the Code states:

26                   Notwithstanding any other provision of law, in a proceeding conducted by  
27                   a board within the department pursuant to law to deny an application for a license  
28                   or to suspend or revoke a license or otherwise take disciplinary action against a  
29                   person who holds a license, upon the ground that the applicant or the licensee has  
30                   been convicted of a crime substantially related to the qualifications, functions,  
31                   and duties of the licensee in question, the record of conviction of the crime shall  
32                   be conclusive evidence of the fact that the conviction occurred, but only of that  
33                   fact, and the board may inquire into the circumstances surrounding the  
34                   commission of the crime in order to fix the degree of discipline or to determine if  
35                   the conviction is substantially related to the qualifications, functions, and duties  
36                   of the licensee in question.

37                   As used in this section, "license" includes "certificate," "permit,"  
38                   "authority," and "registration."

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1           11.     California Code of Regulations, title 16, section 2521, states:

2           For the purposes of denial, suspension, or revocation of a license pursuant  
3           to Division 1.5 (commencing with Section 475) of the Business and Professions  
4           Code, a crime or act shall be considered to be substantially related to the  
5           qualifications, functions or duties of a licensed vocational nurse if to a substantial  
6           degree it evidences present or potential unfitness of a licensed vocational nurse to  
7           perform the functions authorized by his license in a manner consistent with the  
8           public health, safety, or welfare. Such crimes or acts shall include but not be  
9           limited to those involving the following:

10           (a) Procuring a license by fraud, misrepresentation, or mistake.

11           (b) A conviction of practicing medicine without a license in violation of  
12           Chapter 5 of Division 2 of the Business and Professions Code.

13           (c) Violating or attempting to violate, directly or indirectly, or assisting in  
14           or abetting the violation of, or conspiring to violate any provision or term of  
15           Chapter 6.5, Division 2 of the Business and Professions Code.

16           (d) Aiding or assisting, or agreeing to aid or assist any person or persons,  
17           whether a licensed physician or not, in the performance of or arranging for a  
18           violation of any of the provisions of Article 13, Chapter 5, Division 2 of the  
19           Business and Professions Code.

20           (e) Conviction of a crime involving fiscal dishonesty.

21           (f) Any crime or act involving the sale, gift, administration, or furnishing  
22           of "narcotics or dangerous drugs or dangerous devices" as defined in Section  
23           4022 of the Business and Professions Code.

24           12.     California Code of Regulations, Title 16, section 2522.5 states:

25           (a) When considering the suspension or revocation of a license on the  
26           ground that a licensed vocational nurse has been convicted of a crime, the Board,  
27           in evaluating the rehabilitation of such person and his eligibility for a license will  
28           consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or  
offense(s).

(4) Whether the licensee has complied with any terms  
of parole, probation, restitution, or any other  
sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings  
pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the  
licensee.

13. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

**DRUG**

14. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and Professions Code section 4022.

15. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

16. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(January 22, 2007 Criminal Conviction for Commercial Burglary on June 2, 2005)**

3 17. Respondent has subjected his license to disciplinary action under sections  
4 490 and 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is  
5 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.  
6 The circumstances are as follows:

7 a. On or about January 22, 2007, in a criminal proceeding entitled  
8 *People of the State of California v. Sovann Prak, aka Sovedo Prak*, in Orange County Superior  
9 Court (Harbor Justice Center), case number 05SF1069, following two bench warrants for failure  
10 to appear, Respondent was convicted on his plea of guilty of violating Penal Code section 459-  
11 460, subdivision (b), second degree commercial burglary, a misdemeanor.

12 b. As a result of the conviction, on or about January 22, 2007,  
13 Respondent was sentenced to three years informal probation, completion of 10 days CalTrans  
14 service, and payment of \$130 in fees, fines, and restitution.

15 c. The facts that led to the conviction were that on or about the  
16 evening of June 2, 2005, a deputy from the Orange County Sheriff's Department responded to a  
17 Macy's department store in Laguna Hills in reference to a theft suspect detained by the store's  
18 loss prevention department. A loss prevention officer told the deputy that she observed  
19 Respondent on the store's closed circuit television select two pairs of pants and three shirts from  
20 the Junior's department, and take them to the Petite department's dressing room. Two loss  
21 prevention officers entered the dressing room and observed Respondent through the reversed  
22 louvers on the fitting room door. Respondent removed the security sensor tag from a black shirt  
23 and concealed the shirt in his purse. Respondent exited the fitting room carrying the two pairs of  
24 pants and two shirts. The officers followed Respondent down the escalator where he dumped the  
25 clothing on a rack next to the escalator. The security sensor tag from the black shirt had been  
26 placed in the pocket of a pair of pants. Respondent exited the store without paying for the black  
27 shirt in his purse. The loss prevention officers detained Respondent and took him back to their  
28 security office. Inside Respondent's purse was the black shirt and a pair of wire cutters.

1 Respondent admitted to the sheriff's deputy that he brought the wire cutters to the mall with the  
2 intention of using them to cut tags off of merchandise in order to steal it. Respondent initially  
3 told the deputy that his boyfriend dropped him off at the mall, but eventually admitted he drove  
4 himself in his boyfriend's car. With Respondent's permission, a second deputy searched  
5 Respondent's car. Respondent admitted that he had approximately 5 grams of methamphetamine  
6 in the car for which he paid \$150 to a friend in Long Beach earlier in the day. The deputy  
7 recovered a methamphetamine pipe in plain view on the right front passenger seat. The deputy  
8 also recovered seven, small zip-loc baggies containing a white crystalline substance and a second  
9 methamphetamine pipe in a purse on the front passenger seat. The deputy used a Narcotics  
10 Identification Kit to confirm the substance was methamphetamine. Respondent admitted to the  
11 deputy that the purse and the methamphetamine belonged to him.

#### 12 **SECOND CAUSE FOR DISCIPLINE**

##### 13 **(Unprofessional Conduct - Possession of a Controlled Substance on June 2, 2005)**

14 18. Respondent has subjected his license to disciplinary action under section  
15 2878.5, subdivision (a) of the Code in that on or about June 2, 2005, Respondent possessed, and  
16 admitted to the arresting deputies that he possessed, approximately 5 grams of methamphetamine  
17 and two pipes used for smoking methamphetamine, as detailed in paragraph 17, above, in  
18 violation of section 4060 of the Code.

#### 19 **THIRD CAUSE FOR DISCIPLINE**

##### 20 **(July 10, 2007 Criminal Conviction for Theft on January 1, 2005)**

21 19. Respondent has subjected his license to disciplinary action under sections  
22 490 and 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is  
23 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.

24 The circumstances are as follows:

25 a. On or about July 10, 2007, in a criminal proceeding entitled *People*  
26 *of the State of California v. Sovann Prak*, in San Bernardino County Superior Court, case  
27 number MSB082038, Respondent was convicted on his plea of guilty of violating Penal Code  
28 section 484, subdivision (a), theft, a misdemeanor.

1                   b.       As a result of the conviction, on or about July 10, 2007,  
2 Respondent was sentenced to serve one day in the county jail (with credit for time served), two  
3 years informal probation, and payment of \$800 in fees, fines, and restitution.

4                   c.       The facts that led to the conviction were that on or about the  
5 afternoon of January 1, 2005, an officer from the San Bernardino Police Department was  
6 dispatched to a Macy's department store in reference to a shoplifter in custody. Respondent and  
7 a female companion had been detained after they were observed by Macy's plainclothes loss  
8 prevention agents removing merchandise from the store's shelves and concealing it on their  
9 person. Respondent's theft was captured on closed circuit video surveillance. Respondent told  
10 the police officer that he and his female companion entered Macy's, selected a purse from a shelf  
11 and proceeded to the second floor. Once there, they selected items of clothing from the shelves  
12 and took them into the same dressing room stall. Respondent admitted cutting security sensor  
13 tags from the clothing and concealing two pairs of pants under his shirt. Respondent also  
14 concealed the purse inside a denim purse he brought with him into the store. Both Respondent  
15 and his friend exited the store without paying for any of the items. Taken from Respondent as  
16 evidence was a pair of pliers used to cut the security sensor tags from the merchandise.

17                                   **FOURTH CAUSE FOR DISCIPLINE**

18                                   **(Unprofessional Conduct - Commission of Dishonest Acts)**

19                   20.       Respondent has subjected his license to disciplinary action under section  
20 2878, subdivision (j) of the Code in that on or about January 1, 2005 and June 2, 2005,  
21 Respondent entered two separate Macy's department stores and intentionally stole merchandise  
22 by removing security sensor tags using a tool he brought into the store, concealing the  
23 merchandise, and exiting the stores without paying for the items. As a result, Respondent was  
24 convicted of second degree commercial burglary and theft, as detailed in paragraphs 17 and 19,  
25 above. Additionally, Respondent was found in possession of an illegal controlled substance on  
26 or about June 2, 2005, as detailed in paragraphs 17 and 18, above.

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**FIFTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Making a False Statement on Application for License Renewal)**

21. Respondent has subjected his license to disciplinary action under section 2878, subdivision (e) of the Code in that Respondent made a false statement in connection with his application for issuance of a license. On or about July 23, 2008, Respondent signed his Application for Renewal of License. Block 11 of the renewal application asked:

Since you last renewed your license, have you ever been convicted or pled nolo contendere to any violation of any law of any state in the United States or a foreign country? (You are required to list any conviction that has been set aside and/or dismissed under Penal Code section 1203.4.)

In response to Question 11, Respondent checked the "Yes" box and wrote: "(2005) Petty theft. I attached court record." Respondent failed to include his January 22, 2007 criminal conviction for second degree commercial burglary, as detailed in paragraph 17, above. Block 12 of the renewal application states: "Please read carefully before signing. False statements included in this application can result in license denial." Respondent signed the renewal application, and declared under penalty of perjury under the laws of the State of California that his answers were true and correct.

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1 **PRAYER**

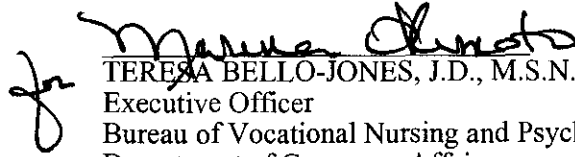
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

4 1. Revoking or suspending Vocational Nurse License Number VN 203379,  
5 issued to Sovann Prak;

6 2. Ordering Sovann Prak to pay the Bureau of Vocational Nursing and  
7 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,  
8 pursuant to Business and Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.  
10

11 DATED: October 15, 2008  
12

13  
14  TERESA BELLO-JONES, J.D., M.S.N., R.N.  
15 Executive Officer  
16 Bureau of Vocational Nursing and Psychiatric Technicians  
17 Department of Consumer Affairs  
18 State of California  
19 Complainant

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